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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,739	11/30/2001	Claude A. Marbler	ATM-2301	4484

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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,739

Applicant(s)

MARBLER ET AL.

Examiner

Jane J Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14, 16, 17, 20-27 and 40 is/are pending in the application.
- 4a) Of the above claim(s) 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16, 17, 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in Paper No. 15 is acknowledged.

Newly amended claim 40 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 40 is a non-elected claim therefore, the amendment to Claim 40 to depend on an elected claim is an impertinent amendment since applicant already decided to not-elect claim 40.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 40 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Rejections Withdrawn

2. The 35 U.S.C. 102 (b) of claims 12-14,20,27 anticipated by Schlaeppi et al. has been withdrawn due to applicant's amendment in response 3/16/2004.
3. The 35 U.S.C. 102(e) of claims 12-14,16-17,23-27 anticipated by Olivieri et al. has been withdrawn due to applicant's amendment in response 3/16/2004.
4. The 35 U.S.C. 103(a) of claims 16,17,21-26 over Schlaeppi et al. in view of Olivieri et al. has been withdrawn due to applicant's amendment in response 3/16/2004.
5. The 35 U.S.C. 103(a) of claims 20-22 over Olivieri et al. in view of Schlaeppi et al.

Response to Arguments

6. Applicant's arguments with respect to claims 12-17,20-27 have been considered but are moot in view of the new ground(s) of rejection.

Specification

7. The amendment filed 3/16/2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The amendment in the specification of 8/18/03, 9/05/2003, and 3/16/2004 introduces new subject matter which was not supported by the original disclosure. The three specification amendment is as follows: The rim around the outer opening of each perforation 18,18' is flat an in the plane of the outer surface of the packaging film 10 (and the of the pre-cut outer layer 1). Also the rim around the inner opening of each perforation 18,18' is 18 and 18' in the lines of perforations extend completely through layer 14. Each line of perforations 18,18' extend completely through layer 14. Each line of perforations 18,18' extends from edge to edge of multi-layer packaging film. It is unclear what part of the perforation is considered the "rim of the outer opening" and the "rim of the inner opening" of the perforation. Furthermore, the "rim" itself is unclear and unrecognized in Figure 1 and figure 2. Figure 1 and Figure 2 do not depict the newly cited amendment of 3/16/2004

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wherein the rim around the inner opening of each perforation 18,18' is flat and in the plane of the inner surface of the pre-cut outer layer 14. Therefore, the new paragraph created by all three amendments in the specification of 8/18/03, 9/05/2003, and 3/16/2004 introduces new subject matter which was not supported by the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter is considered as "cutting the perforations completely through a film that is to be pre-cut plastic layer and in such a manner that rim around each of both openings of each perforation is flat and in plane associated surface of the film."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12-14,20,27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlaeppi et al. (EP 0596747).

Schlaeppi discloses a process comprising manufacturing a multilayer packaging film for a packaging (col. 3 lines 5-13) having at least one line of perforations (figure 1 8a) that are provided in a plastic surface layer of the packaging (col. 4 lines 15-40) and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (col. 3 lines 2-4), including cutting the perforations completely through a film that is to be the precut plastic layer (col. 2 lines 56-57), each at least one line of perforation extending from edge to edge of the multilayer packaging film (figure 1 8a) and joining the precut film to the other layers to provide the multilayer packaging film (col. 3 lines 12-13). Schlaeppi et al. discloses that the rim around each of both openings of each perforation is flat and in plane of associated surface of the film (figure 2 number 8a, or 8b or 8c). Schlaeppi discloses that the precut plastic layer is joined to the other layers by means of an adhesive layer to make up a composite film (col. 4 lines 19-20). Schlaeppi discloses that the perforations are cut before coating the film with adhesive (col. 4 lines 15-17). Schlaeppi discloses that the two lines of perforations are cut parallel or substantially parallel to each other (figure 1 8a and 8c) and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (col. 3 lines 1-4). Schlaeppi discloses that the packaging film is employed for the production of pouch forms of packaging (col. 2 lines

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29-30). Schlaeppi et al. teaches that the film is joined to the other layers by means of extrusion to make up a composite film (col. 4 lines 20-21).

Schlaeppi et al. fails to disclose a notch for initiating tearing in the region of the perforations wherein the packaging being easy to open by means of the tear line.

Schlaeppi et al. teaches that it is notoriously well known in the art to provide a notch for initiating tearing in the region of the perforations wherein the packaging being easy to open by means of the tear line (col. 1 lines 10-13). However, even though Schlaeppi et al. teaches that notches results in the package's integrity being compromised and product spoilage and /or leakage occurring, col. 1 lines 15-16 explicitly states that the tear notches end up in the area of the product receiving chamber *due* to manufacturing malfunctions. Manufacturing malfunctions is the only reason taught by Schlaeppi et al. to stray away from providing notches in packages, hence if no manufacturing malfunctions occurred then no other reason would stray Schlaeppi et al. from providing notches in the invention.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide a notoriously well known notch in order to initiate a tear in a package in absence of manufacturing malfunctions of the product.

9. Claims 16,17,21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlaeppi et al. in view of Olivieri et al. (6427420).

Schlaeppi discloses the process comprising manufacturing a multilayer packaging film described above. Schlaeppi fail to disclose that the notch is situated

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between the two lines of perforations. Olivieri et al. teaches that the notch is situated between the two lines of perforations (figure 8a number 431) for the purpose of tearing the materials forming the pack (col. 8 lines 57-58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Schlaeppi with the notch that is situated between the two lines of perforations in order to tear the materials forming the pack (col. 8 lines 57-58) as taught by Olivieri et al.

10. Claims 12-14,16-17,20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olivieri et al. (6427420) in view of Schlaeppi et al. (EP 0596747).

Olivieri et al. discloses a process comprising manufacturing a multilayer packaging film for a packaging (col. 1 lines 6-7) having at least one line of perforations (figure 8a number 433) that are provided in a plastic surface layer of the packaging (col. 2 lines 58-68, figure 8 number 433) and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (col. 8 lines 65-67), including cutting the perforations completely through a film that is to be the precut plastic layer (col. 7 lines 35-39), each at least one line of perforation extending from edge to edge of the multilayer packaging film (col. 10 lines 30-31) and joining the precut film to the other layers to provide the multilayer packaging film (col. 10 lines 17-20), and providing a notch for initiating tearing in the region of the perforations (figure 9a number 431), the packaging being easy to open by means of the tear line (col. 2 lines 53-54). Olivieri et al. discloses that the precut plastic layer is joined to the other layers by means of an adhesive layer to make up a composite film (col. 10 lines 17-20). Olivieri et al.

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discloses that the perforations are cut before coating the film with adhesive (col. 10 lines 14-16). Olivieri et al. discloses that the two lines of perforations are cut parallel or substantially parallel to each other (figure 9a numbers 433 and 432) and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (figure 9a numbers 433 and 432) and a notch is situated between the two lines of perforations (figure 9a number 431). Olivieri et al. discloses that the packaging film is employed for the production of pouch forms of packaging (col.1 lines 22).

Olivieri et al. fail to disclose that the rim around each of both openings of each perforation is flat and in plane of associated surface of the film. Olivieri et al. fail to disclose that the film is joined to the other layers by means of extrusion to make up a composite film. Schaeppi et al. teaches that the rim around each of both openings of each perforation is flat and in plane of associated surface of the film (figure 2 number 8a) for the purpose of facilitating the rupture of all layers of the film when force is applied, to effect easy opening of a package made from the film (col. 3 lines 2-4). Schlaeppi et al. teaches that the film is joined to the other layers by means of extrusion to make up a composite film (col. 4 lines 20-21) for the purpose of securing the inner and outer layers together (col. 4 lines 19-20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Olivieri et al. with the rim around each of both openings of each perforation that is flat and in the plane of associated surface of the film in order to facilitate the rupture of all layers of the film when force is applied, to effect easy opening of a package made from the film (col. 3 lines 2-4)

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Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Olivieri et al. with the film that is joined to the other layers by means of extrusion to make up a composite film in order to secure the inner and outer layers together (col. 4 lines 19-20) as taught by Schlaeppi et al.

Conclusion

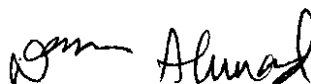
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
May 21, 2004


NASSER AHMAD
PRIMARY EXAMINER